

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15078 of Cheryl Y. Reed, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2516 to allow a theoretical lot subdivision, a variance from the provision that the area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required [Paragraph 2516.6(a)], a variance from the provision that each means of vehicular ingress or egress to any principal building shall be 25 feet in width [Paragraph 2516.6(b)], a variance from the provision that a turning area be provided with a diameter of not less than 60 feet [Paragraph 2516.6(c)], a variance from the requirement that open space in front of the entrance shall be equivalent to the required rear yard [Paragraph 2516.5(b)], a variance from the rear yard requirement [Paragraph 2516.5(c) and Sub-section 404.1], a variance from the lot area and width of lot requirements (Sub-section 401.3), and a variance to allow a row dwelling (sub-section 301.1) for a theoretical lot subdivision and construction of two semi-detached and one row dwelling in an R-2 District at premises 3400, 3402, and 3404 - 5th Street, S.E., (Square 5969, Lot 2).

HEARING DATES: June 28, 1989 and June 20, 1990
DECISION DATES: July 28 and September 6, 1989, and May 2 and September 5, 1990

FINDINGS OF FACT:

1. The application was originally scheduled and heard at the public hearing of June 28, 1989. At its public meeting of July 28, 1989, the Board deferred consideration of the application until its public meeting of September 6, 1989, to allow the inclusion of the Advisory Neighborhood Commission's post-hearing submission into the record. Subsequent to the public meeting of July 28, 1989, the Zoning Commission amended the Zoning Regulations relative to theoretical building site controls by its Order No. 627, which became effective on August 11, 1989. At its public meeting of September 6, 1989, the Board deferred consideration of the application and directed the staff to submit the application to the Zoning Administrator for further review to determine the appropriate relief pursuant to the amended Zoning Regulations. The staff referred the application to the Zoning Administrator by letter dated September 14, 1989. At its public meeting of May 2, 1990, staff informed the Board that no response to its request for a review had been received from the Zoning Administrator. The Board directed staff to reschedule the application for public hearing. The application was rescheduled for public hearing on June 20, 1990, for consideration pursuant to the amended provisions of the Zoning Regulations.

2. The property is located on the east side of 5th Street, just south of the intersection of 5th and Trenton Streets and is known as premises 3400, 3402 and 3404 5th Street, S.E. It is zoned R-2.

3. The property is irregularly shaped and has no direct frontage on 5th Street except for a small "dogleg" approximately 15 feet in width and 48 feet in length. The site widens in increments to 34 feet in width for a depth of approximately 42 feet and to 100 feet in width for a depth of approximately 75 feet. The site contains approximately 9,648 square feet of lot area.

4. The R-2 District permits matter-of-right development of single-family detached and semi-detached dwellings with a minimum lot area of 3,000 square feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories and 40 feet.

5. The applicant proposes to theoretically subdivide the lot into three lots measuring 3,033, 3,060, and 3,000 square feet, respectively. Each of the three theoretical lots would be developed with a single-family residence. Two of the proposed residences would be semi-detached units. The center unit would be a row dwelling.

6. The area surrounding the site is generally developed with a mixture of residential uses including detached, semi-detached dwellings and low-rise apartment buildings. The property is bounded by an R-5-A District developed with condominium apartments to the south, east and west. The intersection of Alabama and Martin Luther King Jr. Avenues is situated approximately two blocks north of the subject site. St. Elizabeth's Hospital is located approximately 1/2 mile to the north. There is a large expanse of U.S. Government property south of Mississippi Avenue and the Oxon Run Parkway.

7. The proposed dwellings will be two-story plus basement, three bedroom homes with a one-car garage at the basement level. Access to the homes will be via an easement across the 15 foot wide "dogleg" from 5th Street.

8. The R-2 District does not allow row dwellings as a matter-of-right. A variance from the use provisions is therefore required for construction of the proposed center unit.

9. The development of the subdivided lots as proposed would comply with all the area requirements of the R-2 District.

10. The applicant testified that the property is affected by an extraordinary situation due to its irregular shape and its lack of direct access to the public street. The applicant further testified that she would suffer a practical difficulty if the

proposed relief is denied because the unusual public street access of the site would make utility hook-ups to the site difficult and expensive.

11. The applicant further testified that three dwelling units on the subject site represent the best use of the land because of its size, the surrounding apartment developments, the market value of neighborhood properties, and the expense of developing the site due to existing lot constraints and lack of convenient public street access.

12. The applicant testified that the proposed development would benefit the area in that it would provide moderate income housing, promote stable vs. transient occupancy, and enhance the appearance of the neighborhood by eliminating the existing vacant lot and problems of unsightly trash accumulation.

13. By memoranda dated June 21, 1989 and June 15, 1990, the Office of Planning recommended that the application be denied. The OP was of the opinion that the proposed development would adversely impact the immediate area in terms of limited access, parking, and overall density. The OP was further of the opinion that there is no undue hardship or practical difficulty which would prevent the applicant from developing the site in a manner consistent with the R-2 District and that the introduction of a row house, which is not permitted in the R-2 District, would seriously impair the intent, purpose and integrity of the Zoning Regulations.

14. Advisory Neighborhood Commission (ANC) 8C, by correspondence dated June 21 and July 21, 1989 and June 14, 1990, opposed the granting of the application based on the following:

- a. The proposal would threaten the character of the area and create a density problem.
- b. The proposed access drive would create a traffic problem at the intersection of 5th and Trenton Streets, S.E.
- c. The added population would cause traffic and parking problems.
- d. The added units may adversely impact the City's sewage and drainage system.

The ANC recommended that the applicant consider revising the plans and construct only two dwellings on the site.

15. The record contains several letters from nearby property owners in opposition to the proposed development.

16. At the conclusion of the public hearing on June 20, 1990, the Board left the record open for the applicant to submit a possible alternative development scheme for the subject site. By correspondence dated August 21, 1990, the applicant submitted a proposed subdivision which would allow for the development of two single-family dwellings on the site. The applicant indicated that several alternatives were considered but were rejected as detrimental to the neighborhood or too risky for the developer. The applicant reasserted her contention that the development of the site for three dwellings as originally proposed would be the most efficient and best use of the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, area variances and a use variance. As to the use variance, the Board concludes that the applicant has not met the requisite burden of proof. There is no evidence that the strict application of the Zoning Regulations would result in an undue hardship upon the owner. The Board further concludes that the introduction of a use which is not permitted as a matter-of-right would impair the intent, purpose and integrity of the Zoning Regulations.

As to the special exception and area variances, the Board concurs with the opinion of the Office of Planning and Advisory Neighborhood Commission that the proposed construction of three dwellings on the site would adversely impact the area in terms of the over-development of the site and traffic problems which could be created by the use of the limited access by the projected population of the development. The Board concludes that the revised site plan, marked as Exhibit No. 47A of the record, is more in keeping with the intent and purpose of the Zoning Regulations and complies with the provisions of 11 DCMR 2516. In addition, the Board concludes that the property is affected by an exceptional condition due to the unusual configuration of the site and that the owner would suffer a practical difficulty in attempting to develop the site in strict compliance with the provisions of the Zoning Regulations.

Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the CONDITION that development of the site is limited to two semi-detached dwellings.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15078
PAGE 5

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

FEB 28 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15078

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 28 1991, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Alethea Campbell
745 Congress Street, S.E.
Wash, D.C. 20032

Marion Mills
3423 5th Street, S.E., #32
Wash, D.C. 20032

Willie Lockridge, Chairperson
Advisory Neighborhood Commission 8-C
3125 M.L. King Avenue, S.E., Suite 2
Washington, D. C. 20020

Mary J. Cuthbert
Congress Heights Comm. Assn.
P.O. Box 6939
Wash, D.C. 20032

Cheryl Y. Reed
3017 Vista Street, N.E.
Wash, D.C. 20018

A handwritten signature in dark ink, appearing to read "ELC", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: FEB 28 1991